

## ABANDONED SHIPWRECK ACT

JULY 6, 1984.—Ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

### REPORT

[To accompany H.R. 3194 which, on June 3, 1983, was referred jointly to the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 3194) to provide for the protection of any historic shipwreck or historic structure located on the seabed or in the subsoil of the lands beneath navigable waters within the boundaries of the United States, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and substitute:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Abandoned Shipwreck Act."

#### SEC. 2. FINDINGS.

The Congress finds that—

- (1) States have the responsibility for management of a broad range of living and nonliving resources in State waters and submerged lands;
- (2) included in the range of resources are certain abandoned shipwrecks.

#### SEC. 3. DEFINITIONS.

In this Act—

- (1) "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior under section 101 of the Act of October 15, 1966 (16 U.S.C. 470a).
- (2) "shipwreck" means vessels and wrecks of the sea, their cargo, and other contents.
- (3) "State" means a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.

(4) "submerged lands" means the lands—

(A) that are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) ;

(B) of Puerto Rico, as described in section 8 of the Act of March 2, 1917 (48 U.S.C. 749) ;

(C) beneath the navigable waters of Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands, including inland navigable waters and waters that extend seaward to the outer limit of the territorial sea.

**SEC. 4. RIGHTS OF OWNERSHIP.**

(a) The United States asserts title to any abandoned shipwreck that is—

(1) substantially buried in submerged lands of a State ;

(2) in coralline formations on submerged lands of a State ; or

(3) on submerged lands of a State when—

(A) listed on the National Register ; and

(B) the public is given adequate notice of the site location.

(b) The title of the United States to any abandoned shipwreck asserted under subsection (a) of this section is transferred to the State in or on whose submerged lands the shipwreck is located.

(c) Any abandoned shipwreck in or on the public lands of the United States (except the outer Continental Shelf) or Indian lands is the property of the United States Government.

(d) This section does not affect any right reserved by the Government or the States under—

(1) sections 3, 5, and 6 of the Submerged Lands Act (43 U.S.C. 1311, 1313, and 1314) ; and

(2) sections 19 and 20 of the Act of March 3, 1899 (33 U.S.C. 414-415).

**SEC. 5. RELATIONSHIP TO OTHER LAWS.**

(a) The law of salvage does not apply to abandoned shipwrecks to which section 4 of this Act applies.

(b) This Act does not change the laws of the United States relating to shipwrecks, other than those to which this Act applies.

(c) This Act does not affect any suit filed before the date of enactment of this Act.

**SEC. 6. GUIDELINES.**

To clarify that State waters and shipwrecks offer recreational opportunities to sport divers and other interested groups, the Advisory Council on Historic Preservation, established under section 201 of the Act of October 15, 1966 (16 U.S.C. 470i), in consultation with appropriate public and private sector interests (including archeologists, salvors, sport divers and State Historic Preservation Officers) shall publish, within 6 months after the enactment of this Act, advisory guidelines for the protection of shipwrecks and properties that—

(1) assist States and the United States Government in developing legislation and regulations to carry out their responsibilities under this Act ; and

(2) allow for recreational exploration of shipwreck sites that is non-injurious to the shipwreck or the environment surrounding the site.

Amend the title so as to read :

To establish the title of States in certain abandoned shipwrecks, and for other purposes.

**PURPOSE OF THE LEGISLATION**

The purpose of H.R. 3194 is to give states title to certain abandoned shipwrecks that are buried in state lands or have historical significance and are on state lands, and to clarify the regulatory and management authority of states for these abandoned shipwrecks. The Committee expects that H.R. 3194 will encourage the proper management of certain abandoned shipwrecks and that states will retain control over excavation on state lands while, at the same time, providing access to the resource to sport divers and other groups.

## COMMITTEE ACTION

H.R. 3194 was introduced in the House on June 2, 1983, by Congressman Walter B. Jones of North Carolina and was referred jointly to the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries. Two other bills have been introduced in the 98th Congress on historic shipwrecks—H.R. 69, introduced by Congressman Charles E. Bennett of Florida, and S. 1504, introduced by Senators Lloyd Bentsen and John Tower of Texas.

On September 27, 1983, Congressman Jones chaired an Oceanography Subcommittee hearing on H.R. 3194 and H.R. 69. The following witnesses testified at the hearing: The Honorable Charles E. Bennett, U.S. Representative, State of Florida; The Honorable Joseph Curran, Lieutenant Governor of the State of Maryland; Mr. John C. Fine, Attorney at Law, representing the Underwater Society of America; Professor Gordon Watts, Department of History, East Carolina University, Greenville, North Carolina; Mr. David P. Horan, Attorney at Law; and Professor Fred Wendorf, Chairman, Texas State Antiquities Committee, Austin, Texas. Most witnesses expressed the belief that some form of legislation would be helpful. However, there was disagreement over whether states or traditional admiralty principles, as applied by the courts, should govern management of historic shipwrecks.

On June 19, 1984, the Full Committee on Merchant Marine and Fisheries discharged the Subcommittee on Oceanography from further consideration of H.R. 3194 and proceeded to mark up the legislation. At the markup, Chairman Jones offered an amendment in the nature of a substitute to H.R. 3194. Following questions by Mr. Hughes concerning the effect of the legislation on pending litigation, the Committee directed staff to draft language to clarify that this Act does not affect any suits pending in court. The Committee adopted the substitute amendment by unanimous voice vote and ordered H.R. 3194, as amended, reported favorably to the House.

## BACKGROUND AND NEED FOR THE LEGISLATION

The central issue underlying this legislation is the ownership of, and authority to manage, abandoned shipwrecks on state lands. Three private sector groups have been identified as having an active interest in abandoned shipwrecks. The largest group is the sport diving community, with approximately two million members. The next largest group is composed of several thousand members of the archeological and historic preservation community. The third group is composed of an indeterminate number of professional treasure salvors.

The increasing demand on historic shipwrecks by these three groups has created a multiple use management problem similar to demands made on other finite resources. Each group has a different use for the resource. For the sport diver, the wrecks are an important focus for recreational diving. Some divers prefer marked underwater trails explaining the wrecks, some divers like wrecks undisturbed by modern man, and others like to collect artifacts from wrecks. The divers' desire for unrestricted access to shipwrecks may conflict with the treasure

salvors' desire for exclusive use of a wreck, and the diver's random collecting of artifacts from wrecks may conflict with the archeologists' concern for ordered collection.

To the archeologist, shipwrecks are an integral part of the total material cultural resource base. Certain social, economic, and technological systems of the past are reflected in the patterned pieces of ship and cargo spread across the ocean floor. Most archeological reconstruction of the past requires the precise recording of the location of each object, a study of the relationships among the objects, and the reconstruction of objects left only as molds in the sand or in mineral concretions. The recovery of such information is as high a priority for the archeologist as the recovery of gold is for the treasure salvor. Some recovery techniques employed by the treasure salvor may destroy this information.

The treasure salvors and the archeologists have conflicting goals. The treasure salvor is primarily interested in what is remaining; and as suggested above, the archeologist is primarily interested in what is missing. The treasure salvor's goal is primarily economic; he wants to minimize his cost while recovering gold, silver, or artifacts that have a maximum commercial value.

Currently, many states claim title to certain abandoned and historic shipwreck resources, and some federal courts sitting in admiralty have also asserted jurisdiction over the resources. Since the passage of the Submerged Lands Act in 1953, states have held title to the lands beneath navigable waters within those states' boundaries. They have managed a wide range of resources and activities in the state waters and state lands. The resources and activities include minerals, living resources such as endangered species, archeological resources such as submerged land sites and sunken ships, recreational opportunities such as sport fishing and diving, economic development such as commercial fishing, port facilities and shipbuilding, and the maintenance of clean water controls.

Since 1963, 25 states (including territories and possessions) have passed laws affecting abandoned shipwrecks. These are: Alaska, Arizona, Colorado, Florida, Georgia, Hawaii, Indiana, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, New Hampshire, New York, North Carolina, North Dakota, Rhode Island, South Carolina, Texas, Vermont, Virginia, Wisconsin and the Northern Mariana Islands.

To date, four conflicting federal court actions have thrown into doubt the legal regime that governs abandoned shipwrecks within state waters. In the first case, *Cobb Coin Co., Inc. v. The Unidentified, Wreck and Abandoned Sailing Vessel*, 525 F. Supp. 186 (1981), the U.S. District Court for the Southern District of Florida held that the federal admiralty law of salvage applied to abandoned shipwrecks lying within Florida's submerged lands. The court found that the Submerged Lands Act of 1953 transferred to the states title to the lands and natural resources of the lands beneath navigable waters, but that title to abandoned wreck sites was not included in the transfer. The court found that the traditional principles of salvage govern activities associated with these shipwrecks. The court determined that the Florida statute that purported to govern shipwrecks within state waters was, in some ways, inconsistent with and was superseded by these sal-

vage principles, and that Cobb Coin Co., Inc. was entitled to exclusive salvage rights over the wreck and cargo. The court also suggested that federal admiralty principles, as applied to the salvage of historic shipwrecks, could be fashioned to safeguard the artifacts and invaluable archeological information associated with the shipwreck, and that the public's interest in the shipwreck could be accommodated through a proper award of a portion of the artifacts to the State of Florida.

On September 9, 1983, the U.S. District Court for the District of Massachusetts found that the State of Massachusetts had a colorable claim to an abandoned shipwreck located within state waters, that an action against property (in this case, a vessel) was in effect a claim against the state, and that the Eleventh Amendment of the United States Constitution barred an action against the state without its consent. The court, therefore, dismissed the action for lack of jurisdiction at the request of the State of Massachusetts. *Maritime Underwater Surveys, Inc. v. the Unidentified, Wreck and Abandoned Sailing Vessel, Her Tackle, Etc.*, Civil Action No. 83-1245 (September 9, 1983).

On December 21, 1983, the U.S. District Court for the District of Maryland reached a similar decision in *Subaqueous Exploration and Archeology, Ltd., and Atlantic Ship Historical Society, Inc., v. The Unidentified Wrecked and Abandoned Vessel, et al.*, Civil Action Nos. 81-51, 81-52, and 81-53 (December 9, 1983), finding the state's claim to the vessel colorable, the action in effect an action against the state, and the Eleventh Amendment a bar to the action.

Finally, in a complex set of actions in the Fifth Circuit, certain salvors obtained title to items recovered from a buried wreck within the submerged lands of the State of Texas after having obtained from the Texas legislature a waiver of the sovereign immunity of the state. An earlier unreported district court decision, that was not appealed, found that the State of Texas owned the artifacts recovered from the wreck and that the Eleventh Amendment barred suit against the state. *Platoro, Ltd., Inc. v. Unidentified Remains, Etc.*, 695 F.2d 893 (1983).

In one of the opinions in the litigation, the district court for the Western District of Texas specifically declined to hold the salvors to the standards of expertise required of marine archeologists, as the state had urged. *Platoro Ltd., Inc. v. Unidentified Remains of a Vessel*, 518 F. Supp. 816 (1981).

The number of shipwrecks in state and federal waters is very difficult to determine. Estimates range into the thousands. State Historic Preservation Officers report that a total of 671 shipwrecks have been located and identified as historic, using state or federal criteria. It is assumed, for the most part that, regardless of value, the majority of shipwrecks hold little interest for archeologists. Therefore, it is likely that many shipwrecks within state waters should be available to divers.

The Committee intends that this legislation will not affect United States military vessels unless they are specifically abandoned by the Government.

Given the conflict within the federal judiciary itself, as well as the obvious divergence between the states on one hand and the federal judiciary on the other, some worthwhile solution is necessary.

The states have, since enactment of the Submerged Lands Act, assumed control over many activities in the very waters where the con-

flict exists. Regulation of activity affecting historic, abandoned shipwrecks involves the inherent power of states to protect the health, safety, welfare, or morals of persons within their jurisdiction—their general police power. In section 6 of the Submerged Lands Act, (43 U.S.C. 1314), the United States retained its “powers of regulation . . . for the constitutional purposes of commerce, navigation, national defense, and international affairs. . . .” H.R. 3194, as reported would not and is not intended to mitigate in any way the retained jurisdiction of the United States, but does recognize that abandoned shipwrecks, as defined by the legislation, are more appropriately regulated on a regular and broadly consistent basis and that the states in exercising their police power are the appropriate regulators.

#### SECTION-BY-SECTION ANALYSIS

Section 1 of H.R. 3194 creates the short title for the bill, “Abandoned Shipwreck Act”.

Section 2 describes the Congressional findings. Congress finds that under the Submerged Lands Act of 1953 the states were given the responsibility for management of a broad range of living and non-living resources in state waters and submerged lands, including planning activities and managing resources consistently, and that certain abandoned shipwrecks should be included in the range of resources.

Section 3 contains the definitions section.

Section 3(1) defines the “National Register” as the National Register of Historic Places maintained by the Secretary of the Interior under section 101 of the Act of October 15, 1966 (16 U.S.C. 470a).

Section 3(2) defines “shipwreck” as vessels and wrecks of the sea, their cargo, and other contents. The Committee understands that the wreck may be pieces of ship and cargo spread for miles and buried in the seabed and may be described as an archeological site as well as a shipwreck.

Section 3(3) defines “State” as a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.

Section 3(4) defines the term “submerged lands” to include, in general, inland navigable waters and waters that extend seaward to three geographic miles or to the outer boundaries of the states, territories, and possessions where their boundaries extend beyond three miles.

Paragraph (A) includes the “lands beneath navigable waters” as defined in section 2 of the Submerged Lands Act. That Act conferred upon the states title to and ownership of the lands and natural resources of the submerged lands, and defined the areas to which the Act applies to include the inland waters of the states and the tidal waters adjacent to the state extending seaward three miles or, in the case of certain states, three marine leagues. Finally, section 2 also includes all filled or reclaimed lands that were formerly lands beneath navigable waters.

The Committee intends in paragraph (B) and (C) to include in the definition of “submerged lands” the lands of the territories and possessions of the United States that are similar to the areas described in section 2 of the Submerged Lands Act. That Act, however, applies only to states, necessitating these additional subsections.

Paragraph (B) includes the lands described in section 8 of the Act of March 2, 1917 (48 U.S.C. 749), which describes among other things the submerged lands under the navigable waters of Puerto Rico. Paragraph (C) describes areas for Guam, the Virgin Islands, and the Northern Mariana Islands similar to those described in paragraphs (A) and (B) for the states and Puerto Rico. The reference to the territorial sea is intended to refer to the outer territorial boundary of the Northern Mariana Islands recognized by the United States. Section 4 defines the rights of ownership for the states and Federal Government. In section 4(a) the United States asserts title to any abandoned shipwreck that meets any one of three criteria.

The first criterion, found in section 4(a)(1), is that the abandoned shipwreck be substantially buried in submerged lands of a state. A shipwreck that is "substantially buried" is one that requires the use of tools for excavation in order to move the bottom sediments to gain access to the shipwreck or its cargo. It is the intent of the Committee that if excavating tools are not necessary for obtaining access to the shipwreck or its cargo, then the abandoned shipwreck does not fall under this criterion. Some methods of excavation which have caused significant site damage include the use of explosives, prop wash, air-lifts, coffer dams and chemicals. While the preceding is not an exclusive listing, it is the intent of the Committee that the use of these devices constitutes the use of "excavating tools."

Storm action may intermittently cover and uncover a shipwreck, leaving unburied a wreck that was once covered. This process should be taken into consideration by the state or by a federal court when making decisions about whether or not a shipwreck is substantially buried.

The intent of the Committee in adopting this criterion is to develop a category of abandoned shipwrecks that serves three purposes. First, it must encompass those abandoned shipwrecks of historical significance to achieve a primary purpose of the legislation. Information available to the Committee indicates that the vast majority of these abandoned shipwrecks are, in fact, buried beneath the sediments. Second, the criteria must be easily applied to provide sufficient certainty for sport divers and others to know if, in fact, a particular wreck is subject to state authority. Third, the definition must be sufficiently narrow to avoid withdrawing from general salvage wrecks customarily the subject of salvage. The Committee has adopted this criteria because it best achieves these three purposes. Furthermore, by applying this legislation to buried abandoned shipwrecks, the Committee intends to clarify the authority of states to control excavation of state submerged lands.

The second criterion, found in section 4(a)(2), refers to abandoned shipwrecks in coralline formations on submerged lands of a state. Coralline formations include coral reefs which are considered highly productive marine ecosystems and in many areas are protected by state and federal legislation. This provision would allow states to regulate activities associated with abandoned shipwrecks in coralline formations on state lands.

The third criterion, listed in section 4(a)(3), refers to abandoned shipwrecks on submerged lands of a state when they are listed on the

National Register of Historic Places and the public is given adequate notice of the site location. As of this date, there are 21 sites with approximately 46 abandoned shipwrecks on or in the submerged lands of the states listed on the National Register. The National Register does not give protection to sites, but listing is an indication of the historical significance of a resource. The National Register criteria (36 C.F.R. 60.4) are based on five basic concepts. The first concept concerns the resource's integrity of location, design, setting, materials, workmanship, feeling and association. In addition to integrity, it applies to resources:

(a) that are associated with events that have made a significant contribution to the broad patterns of our history; or

(b) that are associated with the lives of persons significant in our past; or

(c) that embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possesses high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(d) that have yielded, or may be likely to yield, information important in prehistory or history.

Appropriate public notice of the site location may be accomplished in many different ways, including notice in the Federal Register, the marking of charts, a site marker, notice in local newspapers or diving information centers.

Section 4(b) transfers the title of the United States to any abandoned shipwreck asserted under subsection (a) of this section to the state in or on whose submerged lands the shipwreck is located. The Committee has noted that title to the recovered materials must generally be held in the public domain to receive and expend federal and state grant funds.

Section 4(c) asserts that any abandoned shipwreck located in or on the public lands of the United States is the property of the Government. This section is meant to clarify ownership of abandoned shipwrecks on federal land. The term "public lands of the United States" has the same meaning as does the term "public lands" found in the Archeological Resources Protection Act (ARPA) of 1979 (16 U.S.C. 470aa et seq.); that definition includes lands the fee title to which is held by the United States and Indian lands and excludes lands on the outer Continental Shelf and lands under the jurisdiction of the Smithsonian Institution.

Section 4(d) is a technical section to make clear that this legislation does not affect the rights of the states or the United States in sections 3, 5 and 6 of the Submerged Lands Act (43 U.S.C. 1311, 1313 and 1314). Paragraph (2) makes clear that the responsibilities of the U.S. Army Corps of Engineers for maintenance for navigation, as specified in sections 19 and 20 of the Act of March 3, 1899 (33 U.S.C. 414-415), are not affected by this Act.

Section 5(a) states that the law of salvage does not apply to abandoned shipwrecks described in section 4. Traditional salvage law entitles salvors who are able to meet the necessary conditions of salvage to acquire certain rights to an award for their services from the owner of the property. Awards are customarily assessed liberally to encour-



age salvage of property otherwise in peril of being lost. Subsection (a) of section 5 specifies that the law of salvage shall not apply to the class of shipwrecks described in section 4 to make clear that the states or the Federal Government, as determined by the location of the abandoned shipwreck, may control all activities associated with these shipwrecks. As a corollary, potential salvors of these shipwrecks are required to comply with applicable laws governing these activities before undertaking any recovery operations and will not, simply by virtue of successful recovery, secure rights to an award.

The Committee notes, however, that salvors may play an important role in the location and recovery of these abandoned shipwrecks. The Committee believes that states should encourage the participation of all interested groups in the discovery and recovery of these important resources and that, in appropriate circumstances, compensation for these groups may be entirely appropriate and may advance the overall objective of protecting for everyone's benefit our nation's irreplaceable maritime heritage. The Committee recommends this legislation to the Full House in the conviction that the states are most ably suited to manage these resources properly, and therefore intends by this legislation to confer all rights and authority over them on the states. The Committee acts under the belief that the states will make all appropriate efforts to ensure that the several groups actively interested in these resources are afforded the proper opportunities to participate in this effort.

Section 5(b) specifies that this legislation will not change existing law relating to shipwrecks other than those subject to this legislation.

Section 5(c) states that this legislation will not affect any suits now pending in either federal or state courts regarding ownership of abandoned vessels. The Committee notes that over 30 such suits may be presently pending and that equity requires that these claims be resolved according to the law in effect at the time the claim was filed and that pending claims are unaffected by this legislation. In specifying that these claims will not be affected by the legislation, the Committee does not intend to imply that the legislation would, absent this savings clause, necessarily have any particular effect on these suits one way or another.

Section 6 provides that the Advisory Council on Historic Preservation shall publish guidelines for the protection of shipwrecks and properties that would assist states and the United States Government in developing legislation and regulations to carry out their responsibilities under this Act and to allow for recreational exploration of shipwreck sites that is non-injurious to the shipwreck or the environment surrounding the site.

The purpose of the guidelines would be to provide the states with recommendations for modifications to their laws and regulations concerning abandoned historic shipwrecks. The recommendations should consider the concerns of major interested parties including public and private sector interests and will encourage legislative and regulatory consistency among states. The Committee notes that state regulations interpreting the laws have caused problems for some individuals in a few states and expects that states will review their regulations using the Council's recommendations. Also of particular importance will be a discussion and suggested resolution of the variation in the defini-

tions of the resource among states and between state laws and this Act. The Committee expects that the Council will use as a model its 1972 publication "Guidelines for State Historic Preservation Legislation" when preparing its guidance for the states.

The most active group in the research and appreciation of historic shipwrecks appears to be the sport diving community. The Committee expects that the Council will consult with sport divers who represent a geographical distribution including areas with lakes and rivers as well as coastal areas and a range of special interests such as photography, historical and shipbuilding research, spear fishing, and collecting when developing guidelines on the role of sport divers. The current relationship that has developed between the State of Florida and the salvors of Florida should also be considered by the Council when developing guidelines on the appropriate role of salvors.

At the federal level, the Council should coordinate its guidelines with the Archeological Resources Protection Act of 1979 and its regulations under section 106 of the National Historic Preservation Act, particularly those provisions which specify how agencies take into account the effects of their activities on historic properties. The Committee expects the Council to actively seek the input of those parties most likely to be affected by the federal regulations, particularly State Historic Preservation Officers, sport divers, archeologists, salvors and their representative organizations.

#### INFLATIONARY IMPACT STATEMENT

With respect to the requirements of clause (2) (1) (4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 3194 would have no significant inflationary impact upon prices and costs in the operation of the national economy.

#### COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires a statement of the estimated costs to the United States which would be incurred in carrying out H.R. 3194. However, under paragraph (d) of Clause 7, the provisions of (a) do not apply when the Committee has received a timely report from the Congressional Budget Office.

#### COMPLIANCE WITH HOUSE RULE XI

With respect to the requirements of clause (2) (1) (3) of rule XI of the Rules of the House of Representatives—

(A) No oversight findings or recommendations on the subject of H.R. 3194 have been made by the Committee during the 98th Congress.

(B) The requirement of section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation since it does not provide new budget authority or new or increased tax expenditures.

(C) The Committee has received no report from the Committee on Government Operations of oversight findings and recommendations arrived at under clause 4(C) (2) of rule X of the Rules of the House of Representatives.

(D) The Director of the Congressional Budget Office has furnished the Committee with an estimate and comparison of costs for H.R. 3194 under section 403 of the Congressional Budget Act of 1974. The submission is as follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, June 25, 1984.

Hon. WALTER B. JONES,  
*Chairman, Committee on Merchant Marine and Fisheries, U.S. House  
of Representatives, Longworth House Office Building, Washing-  
ton, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3194, the Abandoned Shipwreck Act, as ordered reported by the House Committee on Merchant Marine and Fisheries, June 19, 1984. We estimate that this bill will have no significant impact on the budgets of federal, state or local governments.

H.R. 3194 would assert federal title to certain abandoned shipwrecks and would transfer title to the state on whose submerged lands the shipwreck is located. This bill also directs the Advisory Council on Historic Preservation to develop guidelines to protect shipwrecks and property. Neither the council nor the affected states are expected to incur significant additional costs as a result of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ERIC HANUSHEK  
(For Rudolph G. Penner, Director.)

#### DEPARTMENTAL REPORTS

As of the date of filing, reports have been received from the Departments of State and Transportation, as follows:

U.S. DEPARTMENT OF STATE,  
Washington, DC, September 26, 1983.

Hon. WALTER B. JONES,  
*Chairman, Committee on Merchant Marines and Fisheries, House of  
Representatives.*

DEAR MR. CHAIRMAN: Pursuant to your request of June 14, 1983, I am pleased to provide the Department's views on H.R. 3194, entitled the "Historic Shipwreck Preservation Act". The purpose of the proposed legislation is to secure for the American people the protection of historical shipwrecks and structures located beneath U.S. navigable waters. Pursuant to the definition of that term in H.R. 3194 which incorporates the definition in 43 USC 1301 (a) and (b), the area in question would not extend more than 3 geographical miles from the coastline except in the cases of Texas and Florida in the Gulf of Mexico, where it would extend to three marine leagues. The Department of State believes that the United States is entitled under international law to exercise jurisdiction over historic shipwrecks within a limited zone adjacent to its coast as so described in H.R. 3194. As such, with the caveat noted below, the Department has no objection to H.R. 3194 and defers to the Departments of Justice and the Interior.

The Department of State does note the references to "within the boundaries of the United States" in Section 5(a) of the bill and to "within the waters of the United States" in Section 8 of the bill. These terms are not defined in the bill and would seem superfluous if the scope of the bill is limited to the area defined by 43 U.S.C. 1301(a) and (b). If these references are intended to give the bill broader geographic scope, the Department of State cannot support the bill as it would be inconsistent with the President's Ocean Policy Statement of 10 March 1983.

The Office of Management and Budget advises that from the standpoint of the Administration's problem there is no objection to the submission of this report.

Sincerely,

ALVIN PAUL DRISCHLER,  
Acting Assistant Secretary,  
Legislative and Intergovernmental Affairs.

U.S. DEPARTMENT OF TRANSPORTATION,  
Washington, DC, October 8, 1983.

HON. WALTER B. JONES,  
Chairman, Committee on Merchant Marine and Fisheries, House of  
Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of the Department of Transportation on H.R. 3194, the "Historic Shipwreck Preservation Act." This bill would place all historical shipwrecks and structures located on the seabed or in the subsoil of the lands beneath the navigable waters of each State under the laws of that State. Presently, historic shipwrecks in State waters are subject to salvage rights even if there are conflicting State laws. This bill also provides that the Federal Government would lose any rights it might have had to these historic shipwrecks.

As the Federal Government's rights to control navigation and commerce in these waters have been preserved, the Department is not directly affected by this bill. Therefore, we would have no objection to it. We would like to offer two technical comments.

(1) The introductory language in section 4 refers to rights reserved to the United States in section 5. That reference should be to section 6 instead of section 5. As section 8 also could be read to reserve authority, we suggest deleting "section 5" after "in" and substituting instead "this Act."

(2) The language following the word "authority" on line 18 of section 4 is applicable to the entire section. The section should be re-drafted to clarify this point by inserting this language immediately after the words "respective States" in the introductory language of section 4.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report for the consideration of the Committee.

Sincerely,

JIM BURNLEY,  
General Counsel

## ABANDONED SHIPWRECK ACT OF 1984

AUGUST 10, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed.

Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

### REPORT

[To accompany H.R. 3194 which, on June 2, 1983, was referred jointly to the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries]

[Including cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 3194) to provide for the protection of any historic shipwreck or historic structure located on the seabed or in the subsoil of the lands beneath navigable waters within the boundaries of the United States, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, line 3, strike out all after the enacting clause and insert in lieu thereof the following:

#### SHORT TITLE

SECTION 1. This Act may be cited as the "Abandoned Shipwreck Act of 1984".

#### FINDINGS

SEC. 2. The Congress finds that—

- (1) States have the responsibility for management of a broad range of living and nonliving resources in State waters and submerged lands; and
- (2) included in the range of resources are certain abandoned shipwrecks.

#### DEFINITIONS

SEC. 3. For purposes of this Act—

- (1) The term "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior under section 101 of the National Historic Preservation Act (16 U.S.C. 470a).

(2) The term "shipwreck" means a vessel or wreck, its cargo, and other contents.

(3) The term "State" means a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.

(4) The term "submerged lands" means the lands—

(A) that are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301);

(B) of Puerto Rico, as described in section 8 of the Act of March 2, 1917 (48 U.S.C. 749); and

(C) beneath the navigable waters of Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands, including inland navigable waters and waters that extend seaward to the outer limit of the territorial sea.

(5) The terms "public lands" and "Indian lands" have the same meaning as when used in the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-47011).

#### RIGHTS OF OWNERSHIP

SEC. 4. (a) The United States asserts title to any abandoned shipwreck that is—

(1) substantially buried in submerged lands of a State;

(2) in coralline formations protected by a State on submerged lands of a State; or

(3) on submerged lands of a State when—

(A) such shipwreck is included in or determined eligible for inclusion in the National Register; and

(B) the public is given adequate notice of the location of such shipwreck.

(b) The title of the United States to any abandoned shipwreck asserted under subsection (a) of this section is transferred to the State in or on whose submerged lands the shipwreck is located.

(c) Any abandoned shipwreck in or on the public lands of the United States (except the outer Continental Shelf) is the property of the United States Government.

(d) This section does not affect any right reserved by the United States or by any State (including any right reserved with respect to Indian lands) under—

(1) section 3, 5, or 6 of the Submerged Lands Act (43 U.S.C. 1311, 1313, and 1314); or

(2) section 19 or 20 of the Act of March 3, 1899 (33 U.S.C. 414-415).

#### RELATIONSHIP TO OTHER LAWS

SEC. 5. (a) The law of salvage shall not apply to abandoned shipwrecks to which section 4 of this Act applies.

(b) This Act shall not change the laws of the United States relating to shipwrecks, other than those to which this Act applies.

(c) This Act shall not affect any suit filed before the date of enactment of this Act.

#### GUIDELINES

SEC. 6. To clarify that State waters and shipwrecks offer recreational and educational opportunities to sport divers and other interested groups, the Advisory Council on Historic Preservation, established under section 201 of the Historic Preservation Act (16 U.S.C. 4701), in consultation with appropriate public and private sector interests (including archeologists, salvors, sport divers, historic preservationists, and State Historic Preservation Officers) shall publish, within 6 months after the enactment of this Act, advisory guidelines for the protection of shipwrecks and properties. Such guidelines shall assist States and the United States Government in developing legislation and regulations to carry out their responsibilities under this Act in such manner as will allow for—

(1) recreational exploration of shipwreck sites, and

(2) private sector recovery of shipwrecks, which is not injurious to the shipwreck or the environment surrounding the site.

Amend the title so as to read:

A bill to establish the title of States in certain abandoned shipwrecks, and for other purposes."

## PURPOSE

As reported, H.R. 3194 would give to the States title to certain abandoned shipwrecks that are buried in State lands or have historical significance and are on State lands and would clarify the management authority of States for these abandoned shipwrecks.

## BACKGROUND AND NEED

The central issue underlying this legislation is the ownership and the authority to manage abandoned shipwrecks on State lands. Currently, states claim title to and regulatory authority over abandoned historic shipwrecks and the Federal Admiralty Court has also claimed jurisdiction over these resources.

Since the passage of the Submerged Lands Act in 1953, States have held title to the lands and natural resources within three miles of their coasts. A series of recent court cases has thrown into doubt the authority of Federal and State governments to regulate historic shipwreck recovery and the private salvor's right to own the artifacts recovered. The controversy has centered on whether the Federal government granted title to shipwrecks to the States in the 1953 law.

A full explanation of the specific issues relating to this legislation and analysis of pertinent court decisions is contained in Part One of this report by the Committee on Merchant Marines and Fisheries.

## CONCERNS RELATING TO PRIVATE-SECTOR RECOVERY

During the Interior Committee's consideration of the bill, it was noted that the only major, unresolved issue related to the interests of private, commercial salvors. The salvors were concerned that, if title to the shipwrecks were vested in the States, then the States would pass restrictive legislation that would effectively put them out of business.

On the other hand, it was noted that there remains the desire by the States to resolve the ownership issue and to clarify their right to manage historic resources on state lands, including submerged lands. All States currently claim ownership of shipwrecks under the Submerged Lands Act. All States also have historic preservation programs. Twenty-five States have enacted specific legislation for the management of shipwrecks. Of these, 13 allow compensation for private sector recovery of the shipwrecks.

The Committee was advised that in Massachusetts, when the Federal Admiralty Court ruled that the State does have jurisdiction, the State did not turn around and pass restrictive legislative banning private sector recovery. In fact, the same commercial salvor who had lost the suit in the Federal Court was able to operate under a permit from the State. During the summer of 1984, the salvor had a successful find that was featured on national television. Under his permit, he will split the recovered material with the State, which will take its 25 percent share in historical and educational information, not necessarily in cash or artifacts.

Similarly, this is the type of arrangement that Florida has had since 1967, both before and after the 1981 Federal Court decision that questioned Florida's jurisdiction. The Governor of Florida strongly supports the bill. The State's Attorney General has indicated that Florida's working relationship with the salvors has become a good one; he sees no future need to have the Federal courts involved in determining how Florida's lands are managed.

In order to further clarify the Congressional intention that private sector recovery of abandoned shipwrecks is not meant to be totally precluded but, rather, to be carried out in a manner that would be non-injurious to the shipwreck or its site, the Interior Committee made a few technical and clarifying changes in the bill, which are described below in the "Summary of Legislation" and "Section-by-Section Analysis." The purpose of the changes, among other things, is to help assure that States make a good-faith effort to include private sector recovery, including both for-profit entities as well as non-profit organizations. At the same time, the changes are also meant to assure that the public interest in the protection and preservation of these historic shipwrecks is met.

#### SUMMARY OF LEGISLATION

##### *Bill as introduced*

As introduced, H.R. 3194 would assert United States title and transfer to States title to historic shipwrecks and structures, defined as ones which meet the age requirement (50 years) for eligibility for the National Register of Historic Places. It would declare that the maritime law of salvage does not apply to them.

##### *Merchant Marine Committee amendments*

As amended by the Merchant Marine Committee, H.R. 3194 would do the following:

Assert U.S. title and transfer to States title to abandoned shipwrecks that are: (1) substantially buried in submerged lands of a State; (2) in coralline formations on submerged lands of a State; or (3) on submerged lands of a State when listed on the National Register.

Declare that the law of salvage does not apply to these abandoned shipwrecks.

Specify that the Act will not affect any suit filed before the date of enactment.

Reaffirm Federal ownership of abandoned shipwrecks on Federal lands.

Direct the Advisory Council on Historic Preservation, in consultation with public and private sector interests, to develop advisory guidelines to assist the States and the United States government in carrying out their responsibilities under the Act and to allow for noninjurious recreational exploration of shipwreck sites.

##### *Interior Committee amendments*

The Committee on Interior and Insular Affairs considered the bill as reported by the Merchant Marine and Fisheries Committee and made a number of technical and clarifying amendments which were incorporated in an amendment in the nature of a substitute. These



changes address several issues that were raised during the Interior Committee's consideration of the bill.

Among the changes made were the following: incorporation of a definition of the terms "public lands" and "Indian lands" so as to have the same meaning as in the Archeological Resources Protection Act of 1979; clarification that properties which are determined eligible for the National Register but not formally listed, and properties in coralline formations protected by a State, are given the protections of the Act; reaffirmation that the Act does not affect rights reserved with respect to Indian lands; and expansion of the provisions of Section 6 to indicate clearly that, among other things, the private sector has a role in the discussion and substance of the guidelines to be developed by the Advisory Council on Historic Preservation and that the guidelines will address the role of the private sector in the recovery of historic shipwrecks.

#### SECTION-BY-SECTION ANALYSIS

Section 1 provides a short title for H.R. 3194, "Abandoned Shipwreck Act." (No change from the Merchant Marine Committee's reported version of the legislation).

Section 2 describes the Congressional findings. (No change).

Section 3 contains definitions. The Interior Committee version makes a technical correction in the title of the National Historic Preservation Act; deletes "of the sea" from the definition of "shipwreck" to assure that, as originally intended, the legislation covers shipwrecks on other navigable waters as well as the sea; and clarifies that the terms "public lands" and "Indian lands" have the same meaning as in the Archeological Resources Protection Act of 1979.

Section 4 defines the rights of ownership for the States and Federal government. The Interior Committee version narrows the class of shipwrecks in coralline formations, to which a State would receive title, to those in formations protected by the State. The Committee's understanding of the intention concerning the meaning of a "substantially buried" shipwreck is essentially the same; namely, that the term refers to one that requires the use of tools for excavation in order to move the bottom sediments to gain access to the shipwreck or its cargo. This would protect, for example, the sport diver who wishes to explore such a shipwreck; sport divers are unlikely to cause significant site damage by using explosives, prop wash, airlifts and dredges as part of their recreational enjoyment of the site. If such excavating tools are not necessary for obtaining access to any part of the shipwreck or its cargo, then the abandoned shipwreck would not fall under this criterion.

It is understood that, if a greater volume of the wreck is buried than is exposed, the wreck would be considered "substantially buried." However, if a sport diver or other interested person were in doubt about a particular shipwreck, that person could check with the appropriate State office before collecting from the wreck.

The Interior Committee version of Section 4 also clarifies that properties which are determined eligible for the National Register but that have not been formally listed and are neither substantially buried

nor in State-protected coralline formations, are given the protections afforded by this Act. This criterion is designed to ensure that shipwrecks that have been determined eligible for inclusion in the National Register pursuant to the regulations of the Secretary of the Interior (36 CFR Part 63), as well as those that have been formally included are given the protections afforded by H.R. 3194.

However, the criterion extends the provisions of this legislation only to properties that have been officially determined eligible; Section 106 of the National Historic Preservation Act, in contrast, applies to all properties that possess the qualities of significance that make them eligible under the National Register criteria (36 CFR § 60.6), including those on which no formal determination of eligibility has been made and those that have not yet been identified or evaluated. Under Section 106, it is the responsibility of the Federal agency whose undertaking may affect such a property to identify the property and determine whether it does in fact meet the criteria. This duty is reflected in Interior's regulations and those of the Advisory Council on Historic Preservation (36 CFR Part 800).

The reason for extending the provisions Section 4 only to properties officially determined eligible, rather than to all eligible properties, is that H.R. 3194 actually vests title to such wrecks in the United States Government and the States, whereas Section 106 of the National Historic Preservation Act requires only that historic properties be considered in planning. While it is reasonable to require Federal agencies to carry out an orderly process of identifying and determining the significance of properties affected by their actions, the establishment of legal title and the resulting transfers to State ownership require that a definite threshold of significance be formally crossed, and that this be clearly recorded so that all affected parties are aware of the property's status. Such recording is not necessary with respect to the classes of shipwreck covered by Sections 4(a)(1) and 4(a)(2) because they will be recognizable as such by virtue of their substantial burial or presence in protected coralline formations.

This criterion of Section 4(a)(3) also requires that "adequate notice" be given of properties listed on or determined eligible for listing on the National Register. As of the date the Interior Committee ordered the bill reported, there were 25 sites with approximately 50 abandoned shipwrecks on or in the submerged lands of the states which have been determined eligible for or included on the National Register. The purpose of providing notice to the public is to ensure that sport divers and others seeking to use abandoned shipwrecks know that wrecks have been found to be historically significant. The need to give such advance notice must be balanced, however, against the danger that notice of location will lead to damage and pilferage.

Accordingly, it is expected that the degree of specificity with which such wrecks are located in public notices will vary from circumstance to circumstance. This notice requirement is, in fact, unique among historic preservation statutes and is not meant to suggest that historic properties must be subjected to formal evaluation and public notice before their protection is considered under Section 106 of the National Historic Preservation Act. The Interior Committee concurs with the Merchant Marine Committee that appropriate public notice of the

site location may be accomplished in many different ways, including notice in the Federal Register, the marking of charts, a site marker, notice in local newspapers or diving information centers. The specificity of such notice may vary, and may be accomplished by other means, such as the one-mile lease-tract method used by some States for offshore oil and gas leases.

The Interior Committee version of Section 4 also deletes the provision in subsection (c) that any abandoned shipwreck on Indian lands is the property of the United States Government and reaffirms in subsection (d) that the section does not affect rights reserved with respect to Indian lands under the Submerged Lands Act or the Act of March 3, 1899.

Section 5 clarifies the relationship of this Act to other laws. The Interior Committee version makes no change in this section. During consideration of the legislation, it was especially noted that section 5 specifies that the legislation will not affect any suits now pending in either Federal or State courts regarding ownership of abandoned vessels. There apparently are over 30 of these. In fairness to them they should be resolved according to the law in effect at the time the claim was filed. Pending claims would not be effected by the legislation.

Section 6 provides for advisory guidelines to be developed by the Advisory Council on Historic Preservation for the protection of shipwrecks and sites to assist States and the Federal government in developing legislation and regulations to carry out their responsibilities under this Act and to allow for recreational exploration of shipwreck sites that is non-injurious to the shipwreck or the environment surrounding the sites.

The purpose of the section is, among other things, to address concerns by sport divers that they not be precluded from pursuing their sport as a result of this legislation. The guidelines are expected to take into account the views of a variety of interests including divers who represent a wide geographical distribution—inland lakes and rivers as well as coastal areas—and wide range of special interests—such as photography, historical and shipbuilding research, spear fishing, and collecting. Other interested public and private sector groups are also to be consulted.

The Interior Committee version of H.R. 3194 makes several technical and clarifying changes to this section, to reflect other interests and concerns relating to the management of the abandoned shipwrecks covered by this Act.

First, the Interior Committee version adds “and educational” after “recreational” in the first sentence, to recognize that the other values represented by these shipwrecks, such as for historical research and scientific study, as well as for recreational enjoyment. In this regard, the Committee also added “historic preservationists” along with the sport divers and other public and private sector interests who will be consulted in development of the advisory guidelines.

Second, the Interior Committee version clarifies that the provisions of section 6 concerning non-injurious recreational uses of the shipwrecks are meant to be included for the use of State and Federal agencies in developing implementing legislation and regulations. This is basically a technical clarification.

Third, the Interior Committee version adds an additional requirement relating to the non-injurious uses allowed with regard to these shipwrecks—namely, that the guidelines would allow for appropriate private sector recovery of abandoned shipwrecks. The purpose is to recognize the role that the private sector can play in helping to carry out an underwater archeological program. Because of the personal and financial risks involved, private participation in such a program is often necessary.

The Committee expects that once the States have title to the abandoned shipwrecks, they will encourage cooperation between the public and private sectors in the identification, preservation or recovery of these shipwrecks by private, for-profit entities as well as by non-profit organization. This has been done in Florida and Massachusetts, States which have also provided for equitable division of the proceeds of recovery (in information as well as artifacts); it is expected that the current relationship that has developed in Florida and Massachusetts will be considered when developing guidelines on the appropriate role of salvors.

It is expected that the development of the guidelines and the implementing legislation and regulations would be done with the full participation of the groups enumerated in the bill—including the amateur and professional archeological and sport diving communities, salvors and historic preservationists, and other interested entities.

Also, it is expected that the Advisory Council on Historic Preservation will coordinate its guidelines under this section with the Archeological Resources Protection Act of 1979 and the Advisory Council's regulations under section 106 of the National Historic Preservation Act, particularly those provisions which specify how agencies take into account the effects of their activities on historic properties. The Advisory Council's existing process, with its strong emphasis on consultation among concerned parties and opportunities for entering into agreements for the treatment of historic properties, will remain substantially in place; these provide a vehicle for the resolution of disputes that may arise over the appropriate treatment of an abandoned shipwreck to which Section 106 and this legislation applies.

#### LEGISLATIVE HISTORY

H.R. 3194 was introduced on June 2, 1983 and referred jointly to the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries. The Committee on Merchant Marine and Fisheries held hearings on the bill on September 27, 1983 and adopted an amendment in the nature of a substitute on June 19, 1984. On July 6, 1984, the bill was reported (H. Rept. 98-884, Part I). The subcommittee on Public Lands and National Parks held a hearing on the bill on July 27, 1984, and adopted an amendment in the nature of a substitute which it favorably referred to the full Committee. The Interior and Insular Affairs Committee considered the bill on August 8, 1984, and adopted the Subcommittee Substitute with amendments and by voice vote ordered favorably reported to the House the amended version of H.R. 3194 with the recommendation that it do pass.

## INFLATIONARY IMPACT STATEMENT

The Committee has determined that passage of this legislation will not have any inflationary impact on the nation's economy.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, August 9, 1984.

HON. MORRIS K. UDALL,  
*Chairman, Committee on Interior and Insular Affairs,*  
*U.S. House of Representatives, Longworth House Office Building,*  
*Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3194, the Abandoned Shipwreck Act of 1984, as ordered reported by the House Committee on Interior and Insular Affairs, August 8, 1984. We estimate that this bill will have no significant impact on the budgets of federal, state or local governments.

H.R. 3194 would assert federal title to certain abandoned shipwrecks and would transfer title to the state on whose submerged lands the shipwreck is located. This bill also directs the Advisory Council on Historic Preservation to develop guidelines to protect shipwrecks and property. Neither the council nor the affected states are expected to incur significant additional costs as a result of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER, *Director.*

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